

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

THOMAS J. TOWNSEND,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 14-2861-JDT-dkv
	)	
DERRICK SCHOFIELD, ET AL.,	)	
	)	
Defendants.	)	

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ORDER DIRECTING ENTRY OF JUDGMENT,  
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH  
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

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On October 30, 2014, Plaintiff Thomas J. Townsend, Tennessee Department of Correction (“TDOC”) prisoner number 512703, who was, at the time, an inmate at the West Tennessee State Penitentiary in Henning, Tennessee, filed a *pro se* complaint pursuant to 42 U.S.C. § 1983, accompanied by a motion for leave to proceed *in forma pauperis*. (ECF Nos. 1 & 2.) After Plaintiff filed the necessary financial documentation, the Court granted leave to proceed *in forma pauperis* and assessed the civil filing fee under the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. §§ 1915(a)-(b). (ECF No. 6.) The order also instructed Plaintiff to advise the Court of any change of address and warned that failure to do could result in dismissal for failure to prosecute. (*Id.* at 3.)

On September 9, 2015, the Court issued an order that, *inter alia*, dismissed the complaint but granted leave to amend within 30 days. (ECF No. 11.) The order warned

Plaintiff that failure to file an amended complaint would result in assessment of a strike pursuant to 28 U.S.C. § 1915(g) and entry of judgment. (*Id.* at 14.) However, Plaintiff did not file an amended complaint within the time specified or otherwise comply with the prior order. Therefore, judgment will be entered in accordance with the September 9, 2015, order of dismissal.<sup>1</sup>

Pursuant to 28 U.S.C. § 1915(a)(3), the Court must also consider whether an appeal by Plaintiff in this case would be taken in good faith. The good faith standard is an objective one. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). The test for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. *Id.* It would be inconsistent for a district court to determine that a complaint should be dismissed prior to service on the Defendants, but has sufficient merit to support an appeal *in forma pauperis*. See *Williams v. Kullman*, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that led the Court to dismiss this case for failure to state a claim also compel the conclusion that an appeal would not be taken in good faith.

Therefore, it is CERTIFIED, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rule of Appellate Procedure 24(a), that any appeal in this matter by Plaintiff would not be taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay the full \$505 appellate

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<sup>1</sup> In addition, the TDOC's Felony Offender Information website shows that Plaintiff has been paroled under the supervision of the Office of Probation and Parole in Maryville, Tennessee. See <https://apps.tn.gov/foil-app/search.jsp>. However, he has failed to submit any change of address.

filing fee or file a motion for leave to appeal *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

For analysis under 28 U.S.C. § 1915(g) of future filings, if any, by Plaintiff, this is the first dismissal of one of his cases as frivolous or for failure to state a claim. This “strike” shall take effect when judgment is entered. *Coleman v. Tollefson*, 135 S. Ct. 1759, 1763-64 (2015).

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE